

REMARKS

Reconsideration of the above-identified application in view of the present amendment is respectfully requested.

By the present amendment, claims 29 and 30, corresponding to claims 2 and 4 rewritten in independent form, have been added. Claim 5 has been amended to preserve proper dependency. Claims 2 and 4 have been cancelled. Allowance of claims 16-28 is noted.

Claims 2 and 4 were rejected as depending from a rejected claim and were indicated as being allowable if rewritten in independent form. Accordingly, claims 29 and 30, which correspond to claims 2 and 4 rewritten in independent form, are allowable.

Claim 5 depends from claim 30 and is allowable for the specific recitations therein and for the same reasons as claim 4.

It is respectfully submitted that claims 1, 3, and 6-15 are allowable. Specifically, claim 1 recites an apparatus including a longitudinal member connectable with a bone portion. A fastener engageable with the bone portion having a longitudinal axis connects the longitudinal member to the bone portion. A housing has a first passage through which the longitudinal member extends. The housing has a second passage with a longitudinal axis extending transverse to the first

passage. The fastener extends through an opening in the housing into the second passage and is movable relative to the housing. The longitudinal axis of the fastener is positionable in any one of a plurality of angular positions relative to the longitudinal axis of the second passage. A spacer received in the second passage of the housing is engageable with the fastener and the longitudinal member. A member fixedly connected to the housing extends from the housing into engagement with the spacer to maintain the spacer in frictional engagement with the fastener to prevent relative movement between the fastener and the housing when the longitudinal member is disengaged from the spacer and the spacer engages the fastener. The fastener and the housing are manually movable relative to each other in opposition to the frictional engagement when the longitudinal member is disengaged from the spacer. A clamping mechanism clamps the longitudinal member, the spacer, and the housing to the fastener to prevent movement of the fastener relative to the housing. None of the cited prior art describes or suggests an apparatus as set forth in claim 1.

U.S. Patent No. 6,440,137 to Horvath et al. discloses a fastening apparatus with a fastener body 10. The body 10 has a groove 30 for receiving a rod 40. A threaded shaft 110 is pivotable relative to the body 10. A washer 120 has a

spherical surface 126 that engages a spherical surface 112 on the shaft 110 whereby the spherical surface 112 on the shaft and the spherical surface 126 on the washer are able to move in rotational communion with the spherical surfaces in contact, see column 3, line 42 to column 4, line 5. Inwardly protruding upsets 12 on the body 10 engage grooves 122 on the washer 120 to capture the washer within the fastener body. The upsets 12 do not prevent relative movement between the shaft 110 and the body 10 when the rod 40 is disengaged from the washer 120 and the washer engages the shaft. Accordingly, the Horvath et al. patent does not describe or suggest a member fixedly connected to a housing and extending from the housing into engagement with a spacer to maintain the spacer in frictional engagement with the fastener to prevent relative movement between the fastener and the housing when a longitudinal member is disengaged from the spacer and the spacer engages the fastener. Thus, claim 1 is allowable.

Claim 3 recites that the member extends through the housing and into engagement with the spacer. The upsets 12 disclosed in the Horvath et al. patent are formed by deforming material of the body 10. The upsets 12 extend from an inner surface of the housing into engagement with the washer 120. Accordingly, the upsets 12 do not extend through the body 10. Therefore, the Horvath et al. patent does not describe or

suggest a member extending through a housing into engagement with a spacer. Therefore, claim 3 is allowable.

Claim 6 recites that the spacer has a groove into which the member extends. None of the cited prior art describes or suggests a spacer having a groove into which a member extends and including all the limitations of claims 1 and 3. Therefore, claim 6 is also allowable.

Claim 7 recites that the member has a surface engageable with the spacer that urges the spacer axially toward the fastener and into frictional engagement with the fastener as the member is inserted through the housing. The Horvath et al. patent does not describe or suggest that the upsets 12 urge the washer 120 toward the shaft 110. Furthermore, the upsets 12 disclosed in the Horvath et al. patent are not inserted through the body 10. Accordingly, the Horvath et al. patent does not describe or suggest a member having a surface engageable with a spacer that urges the spacer axially toward a fastener and into frictional engagement with the fastener as the member is inserted through a housing. Thus, claim 7 is allowable.

Claim 8 recites that the fastener includes a first part spherical surface engageable with a part spherical surface of the housing. None of the cited prior art describes or suggests a fastener including a first part spherical surface

engageable with a part spherical surface of a housing and including all the limitations of claim 1. Therefore, claim 8 is also allowable.

Claim 9 recites that the fastener includes a second part spherical surface engageable with the spacer. None of the cited prior art describes or suggests a fastener having a second part spherical surface engageable with a spacer and including all the limitations of claims 1 and 8. Therefore, claim 9 is allowable.

Claim 10 recites that the fastener includes a surface engageable with the spacer to limit relative movement between the fastener and the housing. None of the cited prior art describes or suggests a fastener including a surface engageable with a spacer to limit relative movement between a fastener and a housing and including all the limitations of claims 1, 8, and 9. Thus, claim 10 is allowable.

Claim 11 recites that the second part spherical surface has a diameter smaller than a diameter of said first part spherical surface. The surface engageable with the spacer to limit relative movement between the fastener and the housing extends between the first and second part spherical surfaces. None of the cited prior art describes or suggests an apparatus as set forth in claim 11 and including all the limitations of claims 1 and 8-10. Therefore, claim 11 is also allowable.

Claim 12 recites that the spacer has an opening through which a tool extends to engage the fastener when the longitudinal member is disengaged from the spacer. None of the cited prior art describes or suggests a spacer having an opening through which a tool extends to engage a fastener when a longitudinal member is disengaged from a spacer and including the limitations of claim 1. Thus, claim 12 is allowable.

Claim 13 recites that the clamping mechanism includes a threaded member threadably engageable with the housing. None of the cited prior art describes or suggests a clamping mechanism including a threaded member threadably engageable with a housing and including all the limitations of claim 1. Therefore, claim 13 is also allowable.

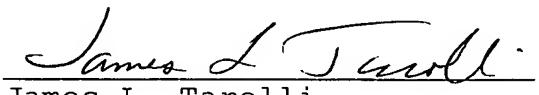
Claim 14 recites that the threaded member engages the longitudinal member to clamp the longitudinal member against the spacer. None of the cited prior art describes or suggests a threaded member engaging a longitudinal member to clamp the longitudinal member against a spacer and including all the limitations of claims 1 and 13. Thus, claim 14 is also allowable.

Claim 15 recites that the threaded member and the housing have a buttress thread. None of the cited prior art describes or suggests a threaded member and a housing having a buttress thread and including all the limitations of claims 1 and 13. Thus, claim 15 is allowable.

In view of the foregoing, it is respectfully submitted that the above-identified application is in condition for allowance, and allowance of the above-identified application is respectfully requested.

Please charge any deficiency or credit any overpayment in the fees for this amendment to our Deposit Account No. 20-0090.

Respectfully submitted,


James L. Tarolli
Reg. No. 36,029

TAROLLI, SUNDHEIM, COVELL,
& TUMMINO L.L.P.
526 Superior Avenue, Suite 1111
Cleveland, Ohio 44114-1400
Phone: (216) 621-2234
Fax: (216) 621-4072
Customer No.: 26,294